Supreme Court, U.S.

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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

PATRICK RYNDAK,

Petitioner,

v.

RIVER GROVE POLICE PENSION BOARD,

Respondent.

Petition for Writ of Certiorari to the Appellate Court of Illinois, First Judicial District

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Has the Petitioner been denied equal protection under the Fourteenth Amendment of the United States Constitution by the Illinois Appellate Court's decision, First Judicial District, Fifth Division, denying him a 65% disability pension because he failed to prove that a special risk or uniqueness of duty factor existed during the performance of his police duties?

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iii
OPINIONS BELOW	1
JURISDICTION	3
CONSTITUTIONAL PROVISION INVOLVED ..	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT:	
BY REJECTING THE *WORTH v. BOARD OF TRUSTEES OF THE POLICE PENSION FUND OF THE VILLAGE OF ORLAND PARK, ILLINOIS*, 230 Ill.App.3d 349, 595 N.E.2d 51 (1st Dist. 3d Div. 1992), ANALYSIS OF THE ILLINOIS PENSION CODE, SECTION 3-114.1 OF ARTICLE 3, WHICH DOES NOT REQUIRE A SPECIAL RISK OR UNIQUENESS OF DUTY FACTOR IN GRANTING A 65% POLICE DISABILITY PENSION, THE APPELLATE COURT DECISION HAS VIOLATED THE PETITIONER'S EQUAL PROTECTION RIGHTS UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION BY REQUIRING THE PETITIONER TO PROVE A SPECIAL RISK OR UNIQUENESS OF DUTY FACTOR IN ORDER FOR THE PETITIONER TO RECEIVE A 65% POLICE DISABILITY PENSION	8
CONCLUSION	14
APPENDICES	*infra*

TABLE OF AUTHORITIES

Cases PAGE

Batka v. Board of Trustees, 186 Ill.App.3d 715, 542 N.E.2d 835 (1989) 8, 12

Olson v. City of Wheaton Police Pension Board, 153 Ill.App.3d 595, 505 N.E.2d 1387 (2nd Dist. 1987) 8, 9, 12, 13

Paul D. Swanson v. Village of Lake in the Hills, 233 Ill.App.3d 58 (2d Dist. 1992) 12

Wall v. Police Pension Board, 178 Ill.App.3d 438, 533 N.E.2d 458 (1988) 8, 9, 11, 12

Worth v. Board of Trustees of the Police Pension Fund of the Village of Orland Park, Illinois, 230 Ill.App.3d 349, 595 N.E.2d 51 (1st Dist. 1992) 2, 3, 10, 11

Constitutional Provision

U.S. Const., Amend. V 3

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The Petitioner respectfully requests this Court to issue a Writ of Certiorari to the Illinois Appellate Court, First Judicial District, Fifth Division, to review the Court's decision and opinion entered on June 11, 1993 (App. A), with a subsequent denial of a Petition for Rehearing on July 22, 1993 (App. B), and a denial for a Petition for Leave to Appeal with the Illinois Supreme Court on December 1, 1993 (App. C).

OPINIONS BELOW

On June 16, 1992, the Circuit Court of Cook County, Illinois, affirmed the judgment of the River Grove Pension Board, denying the Petitioner a 65% disability pension, on

the basis that the Respondent's decision was not against the manifest weight of the evidence nor contrary to law (App. D).

Subsequently thereafter, the Illinois Appellate Court, First District, First Division, in an Appellate Court Opinion, affirmed the judgment of the Circuit Court on the basis that the decision was not against the manifest weight of the evidence nor contrary to law, since the Petitioner had not proven a special risk or uniqueness of duty factor in the performance of his duties as a police officer for the Village of River Grove, Illinois, entitling him to a 65% disability pension.

The Appellate Court decision is contrary to *Worth v. Board of Trustees of the Police Pension Fund of the Village of Orland Park, Illinois*, 230 Ill.App.3d 349, 595 N.E.2d 51 (1st Dist. 3d Div. 1992), which holds that a police officer is entitled to a 65% disability pension irrespective of any special risk or uniqueness of duty factor being present in the performance of his duties as a police officer.

Because of the conflict between the Appellate Court opinion herein and the *Worth* Appellate Court opinion, police officers are now being treated differently in the First Judicial District of the Illinois Appellate Court. Consequently, the denial of the 65% disability pension to the Petitioner because of the absence of a special risk or uniqueness of duty factor is a violation of the Fourteenth Amendment of the United States Constitution.

After the Illinois Appellate Court rendered its decision on June 11, 1993 (App. A), the Petitioner filed a Petition for Rehearing with the Illinois Appellate Court, which petition was denied on July 22, 1993 (App. B).

On December 1, 1993, the Illinois Supreme Court denied the Petition for Leave to Appeal (App. C).

JURISDICTION

1. The decision of the Supreme Court of Illinois, denying the Petition for Leave to Appeal, was entered on December 1, 1993.

2. The federal question of the Petitioner's denial of equal protection, unequal treatment, was raised by the opinion of the Appellate Court, First District, Fifth Division, when the Appellate Court disregarded *Worth v. Board of Trustees of the Police Pension Fund of the Village of Orland Park, Illinois*, 230 Ill.App.3d 349, 595 N.E.2d 51 (1st Dist. 3d Div. 1992), which does not require a special risk or uniqueness of duty factor for the purpose of awarding a 65% duty-related police pension.

3. The Petition for Writ of Certiorari was filed less than 90 days from the denial of the Petition for Leave to Appeal on December 1, 1993.

4. The jurisdiction of this court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

Amendment V: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

STATEMENT OF THE CASE

On September 11, 1991, the Police Pension Board of River Grove met in session and heard evidence in support of the application of Officer Patrick Ryndak dated May 29, 1991, for an In The Line of Duty Disability Pension (Tr. 77).

Various exhibits were introduced by the stipulation of the parties and upon motion of Officer Ryndak. The testimony of Officer Ryndak regarding his basis for disability was heard on direct examination by his attorney, James J. Flood, and in brief cross-examination by members of the Board and Mr. Puchalski, the attorney for the Board.

Reports were submitted by three psychiatrists chosen by the applicant, Doctors Mohan (Tr. 91, 93), Reinstein (Tr. 100), and Kaye (Tr. 95, 96, 97), as well as a psychiatrist chosen by the attorney for the Board, Dr. D'Agostino (Tr. 101, 102, 103). All concluded and agreed that this officer is certified as "disabled" (Tr. 104). A fourth physician, a medical doctor, Dr. S. David Demorest, M.D. (Tr. 105, 106, 94), the medical advisor to the Chicago Police Department, concurred in certifying that Officer Ryndak is disabled.

The diagnostic impression of Dr. S. Mohan, M.D., established that Officer Ryndak suffers from "Major depressive disorder, with anxiety" (Tr. 92). Dr. Michael Reinstein, M.D., P.C., diagnosed Officer Ryndak as suffering from "Post Traumatic Stress Disorder" (Tr. 100). Dr. D. Michael Kaye, M.D., P.C., diagnosed Officer Ryndak as suffering from "Post Traumatic Nervous Instability" (Tr. 96). Dr. Kaye also diagnosed Officer Ryndak as suffering from the

onset of "Presbyopia," a condition of blurred vision for which he suggested comprehensive ophthalmological evaluation (Tr. 97).

Dr. Anthony D'Agostino, M.D., P.C., the psychiatrist selected by the Respondent, rendered an opinion that "Patrick Ryndak is mentally disabled at the present time and is unfit to perform police service." However, Dr. D'Agostino did not state a clinical diagnosis of Officer Ryndak's impairment (Tr. 102).

Dr. S. David Demorest, M.D., Officer Ryndak's personal physician, stated that Officer Ryndak is suffering from post traumatic stress disorder as a result of cumulative circumstances and events of his police career and that he is suffering from a post traumatic headache syndrome as a result of injuries incurred on duty in November, 1990 (Tr. 105).

It is upon the opinion of Dr. Demorest that Officer Ryndak proposes that he is suffering from a dual disability. Officer Ryndak claims disability based upon "cumulative" events of his police career which have caused a mental disability *and* that he suffers from a post traumatic headache disorder as a result of the severe head and facial injuries he suffered on November 26, 1990 at the hands of Bradley Schneck and Kevin Domeck (Tr. 108, 109).

Officer Ryndak had served the Village of River Grove for just a few months short of 22 years at the time of his application for a Disability Pension. During that period he had served as a patrol officer and Investigator (Tr. 30). Ryndak was a very involved and aggressive police officer and, as such, was exposed to a good deal of violence, tragedy and carnage. In 1971, he confronted two home invasion suspects and was shot at 17 times (Tr. 31).

In 1981, he stopped a car driven by a double homicide suspect. When he was blocked by Ryndak's squad car, the suspect produced a gun and shot himself in the head within a few feet of Ryndak, causing cuts to Ryndak's hands and face from flying glass (Tr. 33).

From 1969 through the 1980's, Officer Ryndak was involved in numerous arrests of criminal offenders (Tr. 80-89).

While Officer Ryndak was working as shift commander, a fellow officer, Rick Urso, died of a heart attack in Ryndak's arms despite every effort to revive him (Tr. 33, 34).

In 1985, Officer Ryndak began treatment by Dr. David Demorest, M.D., initially for sleeplessness brought on by job stress. He was prescribed a tranquilizer, Zanax (Tr. 35, 36). He continued to take tranquilizers while experiencing job related stress while working as range instructor (Tr. 36) and through a federal civil rights suit in 1990 wherein he and three other officers were defendants. In that case, the officers received little or no support from the Village, and Ryndak became even more depressed as a result. He continued to take tranquilizers pursuant to Dr. Demorest's prescription (Tr. 37-39).

In the early morning hours of November 26, 1990, while working without a backup officer, Officer Ryndak responded to a call of disturbance at 2410 Thatcher, involving a battery and a request to assist a fire department ambulance crew already present. A struggle ensued between Ryndak and two males in their early 20's. Ryndak was struck in the side of his face and head with a heavy beer mug (Tr. 45). He suffered severe facial injuries (Tr. 46, 110, 111, 112).

Following hospital treatment, he continued to experience swelling, vomiting of blood, and blurred vision and head-

aches. He underwent facial reconstruction surgery on January 4, 1991 (Tr. 49, 105).

After seven months of severe headaches and blurred vision suffered by Ryndak, Dr. Demorest concurred with the opinions of Doctors Mohan, Reinstein, and Kaye that Ryndak is totally and completely disabled from performing the essential functions of a police officer. He suffers from post traumatic stress/headache syndrome as a result of the beating inflicted on November 26, 1990, as well as depression and other multiple problems that are stress and anxiety related as a result of the officer's occupation. Dr. Demorest recommended daily medications including Diazepam, Naprosyn, and Pamelor (Tr. 106).

The Pension Board introduced letters from Dr. Anthony M. D'Agostino, M.D., dated August 5, 1991, and September 3, 1991. While stating that Officer Ryndak is disabled (Tr. 102, 103, 104), Dr. D'Agostino is of the opinion that Ryndak's current disability was not caused by an act of police service (Tr. 102).

REASONS FOR GRANTING THE WRIT

BY REJECTING THE *WORTH v. BOARD OF TRUSTEES OF THE POLICE PENSION FUND OF THE VILLAGE OF ORLAND PARK, ILLINOIS*, 230 Ill.App.3d 349, 595 N.E.2d 51 (1st Dist. 3d Div. 1992), ANALYSIS OF THE ILLINOIS PENSION CODE, SECTION 3-114.1 OF ARTICLE 3, WHICH DOES NOT REQUIRE A SPECIAL RISK OR UNIQUENESS OF DUTY FACTOR IN GRANTING A 65% POLICE DISABILITY PENSION, THE APPELLATE COURT DECISION HAS VIOLATED THE PETITIONER'S EQUAL PROTECTION RIGHTS UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION BY REQUIRING THE PETITIONER TO PROVE A SPECIAL RISK OR UNIQUENESS OF DUTY FACTOR IN ORDER FOR THE PETITIONER TO RECEIVE A 65% POLICE DISABILITY PENSION.

In its opinion, the Appellate Court cites *Olson v. City of Wheaton Police Pension Board*, 153 Ill.App.3d 595 (1987), *Wall v. Police Pension Board*, 178 Ill.App.3d 438 (1988), and *Batka v. Board of Trustees*, 186 Ill.App.3d 715 (1989), for its holding that the pension board's decision was not against the manifest weight of the evidence, because the Petitioner did not show causal connection between his duties as a police officer and his stress based upon a special risk or uniqueness of duty factor.

In conjunction with the Appellate Court opinion relying upon *Olson v. City of Wheaton Police Pension Board*, 153 Ill.App.3d 595 (1987), *Wall v. Police Pension Board*, 178 Ill.App.3d 438 (1988), and *Batka v. Board of Trustees*, 186 Ill.App.3d 715 (1989), the Appellate Court emphasizes that only one psychiatrist, Dr. D'Agostino, determined that the Petitioner's symptoms are related not so much to "post concussion" as they are to various psychological factors that have come into play over the years prior to 1990.

Because of Dr. D'Agostino's psychiatric opinion, the court found that there was no special risk involved relative to the Petitioner's police duties from 1985 until 1990, with the consequence that the Petitioner was not entitled to a 65% disability pension.

On pages 4 and 5 of the Appellate Court's opinion, the Appellate Court relies upon *Olson v. City of Wheaton Police Pension Board*, 153 Ill.App.3d 595 (1987), a second district Appellate Court opinion, that the stress that Olson and the Petitioner experienced "are not unique to plaintiff's duties as a police officer, but rather, are similar to those suffered by any citizen in any job."

Further, on page 5 of its opinion, the Appellate Court, in citing *Wall v. Police Pension Board*, 178 Ill.App.3d 438 (1988), holds that, in the absence of special risk, the Petitioner failed to show a causal connection between his particular, unique duties as a police officer and his stress.

Therefore, on pages 5 and 6 of its opinion, the Appellate Court did not find a special risk or uniqueness of duty factor in denying the Petitioner a 65% disability pension when it stated:

> The record here likewise fails to establish a causal connection between plaintiff's stress and headaches and his unique duties as a police officer. The four psychiatrists who rendered an opinion as to plaintiff's mental state all found plaintiff to be psychologically disabled. Although Dr. Demorest, a family physician, found that plaintiff's psychological disability was caused by specific acts of his police service, the only psychiatrist to discuss a causal connection between plaintiff's employment and his psychological disability was Dr. D'Agostino, who specifically stated that plaintiff's disability was not caused by an act of police service. Furthermore, we find that plaintiff's complaints of stress caused by being named as a defendant in a

> lawsuit and receiving little support from superiors, and seeing a co-worker die of a heart attack are not circumstances unique to police officers. Moreover, the stress and depression plaintiff claims he suffers as a result of the violent nature of police duties are problems related to the general nature of being a police officer, and not by a specific act of police service.

However, the *Worth* Appellate Court opinion very graphically states that no special risk factor is required in awarding a 65% disability pension to a police officer, as long as the police officer is considered on duty, and performing an assignment approved by the chief of the police department of the municipality in which he or she serves, whether the assignment is within or outside the municipality.

For purposes of emphasis, the pertinent language of the *Worth* decision is cited at 354-355:

> The Board relies upon *Johnson v. The Retirement Board of the Policemen's Annuity & Benefit Fund* (1986), 114 Ill.2d 518, 508 N.E.2d 718, in which a police officer sought a duty disability pursuant to Article 5 of the Code (Ill. Rev. Stat. 1989, ch. 18½, par. 5-154). While the officer was at his assigned post at an intersection for traffic control, a person called to him for assistance regarding a traffic accident. In the process of crossing the intersection to investigate and respond, the officer slipped on wet pavement and fell. Defendant argued that the act of walking across a street was an act assumed by any citizen and that therefore the officer was not entitled to a duty disability pension. "Act of duty" was defined in Article 5 in relevant part as a "police duty inherently involving special risk, not ordinarily assumed by a citizen in the ordinary walks of life." (Ill. Rev. Stat. 1989, ch. 108½, par. 5-113.) The court held that special risks encompassed more than only inherently dangerous activities and that, although police perform acts which are similar to those involved in many civilian

occupations, the crux was the capacity in which the officer was acting. (*Johnson*, 14 Ill.2d at 521-22.) The court also held that the officer there was performing the act of duty of responding to a citizen's call for assistance so that he was entitled to a duty disability pension. *Johnson*, 14 Ill.2d at 522.

Unlike *Johnson*, section 3-114.1 of Article 3 of the Code is invoived in plaintiff's case. That section was at issue in *Olson v. City of Wheaton Police Pension Board* (2nd Dist. 1987), 153 Ill.App.3d 595, 505 N.E.2d 1387, which was cited by defendants. In *Olson*, a police sergeant suffered migraine headaches from job stress, which was attributed to differences in management style with his superior, to the bringing of charges against him, and to his assignment as a patrol officer. The court noted that civilians regularly suffered stress in their employment resulting from conflicts with their superiors, from complaints filed against them in connection with their jobs, and from the assignment of tasks which they deemed unsuitable for their position. (*Olson*, 153 Ill.App.3d at 599.) The court cited section 5-113 and held that the officer's stress did not result from his performance of an act of duty. *Olson*, 153 Ill.App.3d at 599-60.

Because the case arose under section 3-114.1, we believe the *Olson* court improperly consulted the Article 5 definition of act of duty because the Article 5 definition (Ill. Rev. Stat. 1989, ch. 108½, par. 5-113) applies only to cases brought under Article 5. (See Ill. Rev. Stat. 1989, ch. 108½, par. 5-102.) The terms used in Article 5 have the meanings ascribed to them in the definitional sections 5-103 through 5-120. (Ill. Rev. Stat. 1989, ch. 108½, par. 5-102.) Article 5 cases applying the special risk component of the Article 5 definition therefore are not relevant to the instant case.

Thus the *Worth* Appellate Court decision, a first district decision, subsequent to *Wall v. Police Pension Board*, 178

Ill.App.3d 438 (1988), *Batka v. Board of Trustees*, 186 Ill. App.3d 715 (1989), and *Olson v. City of Wheaton Police Pension Board*, 153 Ill.App.3d 595 (1987), should have governed the Appellate Court, particularly when the Appellate Court, in this matter, was relying upon a second district decision, *Olson v. City of Wheaton Police Pension Board*, to support its decision, based upon the erroneous analysis of the *Olson* Appellate Court when it relied upon Article 5 of the Illinois Pension Act, rather than upon Article 3 of the Illinois Pension Act for the purpose of determining if the special risk factor were required in the consideration of a 65% police disability duty-related pension.

Also, in his reply brief and petition for rehearing, the Petitioner cited and attached the slip opinion of *Paul D. Swanson v. Village of Lake in the Hills*, 233 Ill.App.3d 58 (2d Dist. 1992), for the purpose of demonstrating to the court that disability pensions can be awarded for stress in conjunction with the observations of the *Worth* Appellate Court.

In its analysis of the pension cases of *Batka v. Board of Trustees of the Village of Orland Park Police Pension Board*, 186 Ill.App.3d 438 (1988), *Olson v. City of Wheaton Police Pension Board*, 153 Ill.App.3d 595 (1987), and *Wall v. Police Pension Board of Village of Schaumburg*, 178 Ill.App.3d 438 (1988), at page 12 of that slip opinion, relative to *Wall*, the court states:

> . . . in *Wall*, the police officer was denied any pension, in part, because none of the police officer's doctors would even speculate whether the officer's stress was job related. The trial court then concluded that plaintiff had in this case established that he is entitled to benefits under the Public Employee Disability Act.

In this matter, as the Appellate Court noted on page 5 of its opinion, four psychiatrists were of the opinion that

the Petitioner was psychologically disabled, which opinions are more than speculation, which distinguishes this Petitioner from *Wall*.

At the same time, the *Swanson* Appellate Court found that stress resulting from conflicts with superiors arising out of police duties is the basis for awarding a 65% disability pension.

In effect, the *Worth* and *Swanson* Appellate Court decisions, one a First District decision and one a Second District decision, both recognize that a special risk or uniqueness of duty factor is not required for awarding a 65% disability pension.

Additionally, in *Olson v. City of Wheaton Police Pension Board*, 153 Ill.App.3d 595 (2d Dist. 1987), at 598, the court recognized that there can be a 65% disability pension award based upon an aggravation of a preexisting condition.

In this instance, the medical opinions of Dr. Demorest and Dr. D'Agostino noted a preexisting stressful condition prior to the November 26, 1990, incident, which certainly was aggravated, as substantiated by the psychiatric reports as hereinafter emphasized.

Dr. Kaye opined:

> Impression: Depressive symptomatology, states of anxiety, and headache are common sequelae to closed head injury. The conditions have been given a variety of names, among them "post traumatic nervous instability." Though these conditions are remarkable for their variability, headache is the central symptom. Depressive symptomatology is often less intense than that seen in depressive psychosis but can be disabling.

Dr. Reinstein rendered a diagnosis of "Post-traumatic Stress Disorder, Subacute."

Dr. Mohan's diagnostic impression of Officer Ryndak established that he suffers from "Major depressive disorder, with anxiety."

Consequently, by ignoring any reference to the *Worth* and *Swanson* Appellate Court decisions, the Appellate Court opinion erroneously rendered a decision denying a 65% disability pension to the Petitioner by requiring a special risk or uniqueness of duty factor, as enunciated in prior Appellate Court decisions that preceded both the *Worth* and *Swanson* opinions.

Because of the conflict between the *Worth* decision as opposed to the *Ryndak* and *Swanson* Appellate Court decisions, the Petitioner, Patrick Ryndak, herein, has been denied a 65% disability pension for his failure to prove a special risk or uniqueness of duty factor in the performance of his police duties, resulting in the violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution.

CONCLUSION

For the above-stated reasons, this Court should grant this Petition for Writ of Certiorari.

Respectfully submitted,

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